

APPEAL NO. 161461
FILED SEPTEMBER 9, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 20, 2016, in San Antonio, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on July 24, 2014, and that the claimant's impairment rating (IR) is 10%. We note the hearing officer's decision and order contains an incorrect zip code for the address of the registered agent of the respondent (carrier). The correct zip code is listed in the decision below.

The claimant appealed, disputing the hearing officer's determinations of MMI and IR. The claimant argues that the evidence shows the claimant had not received adequate medical treatment to address his injuries by the date the designated doctor opined the claimant reached MMI. Additionally, the claimant argues that the designated doctor improperly calculated the IR. The carrier responded, urging affirmance of the disputed MMI and IR determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury in the form of a right Achilles tendon tear, left shoulder strain, and left biceps tendon tear and that (Dr. T) was appointed to determine MMI and IR. The claimant testified that he was injured when he stepped on a piece of concrete and fell forward.

MMI

The hearing officer's determination that the claimant reached MMI on July 24, 2014, is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor

chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Dr. T examined the claimant on August 3, 2015, and certified that the claimant reached MMI on July 24, 2014, with a 10% IR, using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). In her narrative report dated August 3, 2015, Dr. T assigned 2% upper extremity impairment for the left shoulder, 2% upper extremity impairment for the left elbow, and 8% whole person impairment for the right ankle for a total whole person impairment of 10%. In her narrative, Dr. T stated she was using range of motion values for the left shoulder from (Dr. D) on November 21, 2014, as those are the closest competent values to the MMI date. The range of motion values used to determine impairment for the left shoulder were as follows: flexion 170 degrees; extension 30 degrees; abduction 170 degrees; adduction 35 degrees; internal rotation 80 degrees; and external rotation 45 degrees. Dr. T assigned 1% upper extremity impairment for loss of range of motion for flexion and 1% upper extremity impairment for loss of range of motion for external rotation. Dr. T assigned 0% impairment for the range of motion values obtained for extension, abduction, adduction, and internal rotation.

Dr. T mistakenly assigned 0% impairment for 30 degrees extension of the left shoulder. Figure 38 on page 3/43 of the AMA Guides provides 1% upper extremity impairment for 30 degrees of extension.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See Appeals Panel Decision (APD) 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. Under the facts of this case, the certifying doctor's assigned IR can be mathematically corrected based on the documented measurements of the left shoulder.

Assigning 1% upper extremity impairment for loss of range of motion of 30 degrees extension with the previous impairment assigned for the left shoulder results in 3% upper extremity impairment for the left shoulder. Combining 3% upper extremity

impairment for the left shoulder with 2% upper extremity impairment for the left elbow results in 5% upper extremity impairment for the left arm. Using Table 3, page 3/20 of the AMA Guides, 5% upper extremity impairment converts to 3% whole person impairment. Combining 3% impairment for the left upper extremity with 8% impairment for the left lower extremity results in a whole person impairment for the compensable injury of 11% rather than 10%.

The hearing officer found that the preponderance of the other medical evidence is not contrary to Dr. T's assigned IR, and after a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 10% and render a decision that the claimant's IR is 11% as mathematically corrected.

The true corporate name of the insurance carrier is **IMPERIUM INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge